

AO 120 (Rev. 2/99)

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| TO: Mail Stop 8 Director of the U.S. Patent & Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 | REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK |
|-------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------|

In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been
 filed in the U.S. District Court Northern District of California on the following ☒ Patents or ☐ Trademarks:

| | | |
|-------------------------------------------------|------------------------------------|-------------------------------------------------------------------------------------------------------------------|
| DOCKET NO. C-11-1711- EDL | DATE FILED April 7, 2010 | U.S. DISTRICT COURT Office of the Clerk, 450 Golden Gate Ave., 16 th Floor, San Francisco, CA 94102 |
| PLAINTIFF SOFTWARE RESEARCH, INC. | | DEFENDANT MICROSOFT CORPORATION |
| PATENT OR TRADEMARK NO. | DATE OF PATENT OR TRADEMARK | HOLDER OF PATENT OR TRADEMARK |
| 1 7,231,606 | | |
| 2 7,757,175 | | |
| 3 | | <i>"Pls. See Attached. Copy of Complaint".</i> |
| 4 | | |
| 5 | | |

In the above—entitled case, the following patent(s) have been included:

| | | | |
|----------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|--|
| DATE INCLUDED | INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading | | |
| PATENT OR TRADEMARK NO. | DATE OF PATENT OR TRADEMARK | HOLDER OF PATENT OR TRADEMARK | |
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In the above—entitled case, the following decision has been rendered or judgement issued:

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| DECISION/JUDGEMENT |
|--------------------|

| | | |
|---------------------------------|--------------------------------------|---------------------------|
| CLERK Richard W. Wieking | (BY) DEPUTY CLERK Thelma Nudo | DATE April 7, 2011 |
|---------------------------------|--------------------------------------|---------------------------|

Copy 1—Upon initiation of action, mail this copy to Commissioner Copy 3—Upon termination of action, mail this copy to Commissioner
 Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner Copy 4—Case file copy

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10 *Software Research, Inc.*

11 UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 SOFTWARE RESEARCH, INC.,

15 Plaintiff,

16 v.

17 MICROSOFT CORPORATION,

18 Defendant.
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Case No. _____

ORIGINAL COMPLAINT AND
DEMAND FOR JURY TRIAL

ORIGINAL
FILED
APR - 7 2011
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA

EDL

CV 11

1711

1 Plaintiff Software Research, Inc. ("SRI" or "Plaintiff") hereby files its complaint
2 against Defendant Microsoft Corporation ("Microsoft" or "Defendant") for patent
3 infringement. For its complaint, Plaintiff alleges, on personal knowledge as to its own acts
4 and on information and belief as to all other matters, as follows:

5 **PARTIES**

6 1. Software Research, Inc. is a corporation organized under the laws of the
7 State of California, and has its principal place of business in San Francisco, California.
8 SRI is and at all pertinent times was the assignee and owner of the patents at issue in this
9 case.
10

11 2. Defendant Microsoft is a corporation organized under the laws of the State
12 of Washington. Microsoft is doing business in Washington, and has its principal place of
13 business in Redmond, Washington.
14

15 **JURISDICTION AND VENUE**

16 3. This complaint asserts a cause of action for patent infringement under the
17 Patent Act, 35 U.S.C. § 271. This Court has subject matter jurisdiction over this matter
18 by virtue of 28 U.S.C. § 1338(a). Venue is proper in this Court by virtue of 28 U.S.C. §
19 1391(b) and (c) and 28 U.S.C. § 1400(b), in that SRI may be found in this district,
20 Microsoft has committed acts of infringement in this district, and has business offices in
21 this district.
22

23 4. This Court has personal jurisdiction over Microsoft because it provides
24 infringing products and services in the Northern District of California.

25 **INTRADISTRICT ASSIGNMENT**

26 5. Pursuant to Civil LR 3-2(c), this case should be subject to district-wide
27 assignment because it is an Intellectual Property Action.
28

1 6. Plaintiff owns two patents, U.S. Patent No. 7,231,606 ("606 Patent"),
2 "Method and System for Testing Websites," issued on June 12, 2007 to SRI, and U.S. Patent
3 No. 7,757,175 ("175 Patent"), "Method and System for Testing Websites," issued on July
4 13, 2010 to SRI. True and correct copies of the '606 Patent and the '175 Patent are attached
5 as Exhibits "A" and "B" and are incorporated herein by reference. Plaintiff is the legal and
6 rightful owner of the '606 Patent and the '175 Patent.

7
8 **STATEMENT OF THE FACTS**

9 **SRI**

10 7. SRI was founded in 1978 by Dr. Edward Miller. Dr. Miller has a doctorate in
11 electrical engineering and has been a voting member of the IEEE since 1962. Dr. Miller's
12 expertise lies in digital computer systems analysis and design, with an emphasis on software
13 functional, regression, load, performance, and stress testing.

14 8. Dr. Miller founded SRI to develop software testing products and provide
15 related consulting services. As an aspect of this work, SRI organized and held the premier
16 software testing annual trade conference, here and abroad, the Quality Week/Quality Week
17 Europe Conferences, which began in 1987 and ran consecutively for 15 years.

18 9. Beginning in the early 1990's, SRI started development of software test
19 products, including the widely sold and used TestWorks/Unix and TestWorks/Windows
20 product lines. From 1999 forward, the company concentrated on developing its eValid Test
21 enabled web browser, as described below.
22

23 10. SRI remains an operating business, located in San Francisco, California. It
24 continues to develop, test, and market test products, including its eValid test enabled web
25 browser product. It competes directly with Microsoft, as set out within.
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SRI's Test Enabled Web Browser Invention

11. In the late 1990's, websites were evolving from static preconfigured pages to become rich, interactive web applications. With the advent of ecommerce, the reliability and scalability of websites became increasingly important. A popular site could be "hit" thousands of times a minute, a load level that exposes flaws and gives rise to performance issues. In the modern web, sites that malfunction or crash are expensive mistakes, and are mistakes that must be avoided.

12. The importance and complexity of modern websites gave rise to a corollary need: the need for efficient, website functional performance testing. There was an important need for software tools that could emulate user behavior, emulate heavy web traffic, and stress websites to expose design flaws and performance issues.

13. Prior to 2000, website testing tools were based on protocol-level recording. These tools recorded the HTTP request from the browser to the server and back. This approach to testing involved significant one-off manual labor, was slow and imperfect, and ill-suited for the increasingly complicated websites populating the worldwide web.

14. Appreciating this problem, in 1997, Dr. Miller began to work on finding a new method for performance testing rich, interactive websites. After significant effort and expenditure, Dr. Miller invented exactly such a new method: a method that entailed building the software test tools into a browser, and having the browser interact directly with the website, thereby performing performance, stress, and load testing efficiently, reliably, reproducibly, and quickly. Dr. Miller called this technology a "test enabled web browser," and reduced this invention to practice in SRI's eValid product.

15. Technically, SRI's product incorporates standard browsing components and overloads them with its specialized testing capabilities. When used in the Windows context,

1 the eValid product relies on the Trident Rendering Engine libraries, which are published as
2 part of the Internet Explorer ("IE") product. The resulting program is a dedicated, but
3 lightweight, testing enabled browser that is fully compatible with IE or other underlying
4 browser technology.

5 16. This advantageous design provides significant testing advantages, *e.g.*:

- 6 • The eValid testing browser is lightweight and fast. It runs in native
7 machine code and consumes little memory. A single machine, used to
8 emulate client load, can easily run 100+ instances and deliver heavy
9 duty load testing to web applications.
- 10 • Given its approach, the eValid browser is itself the source of events.
11 Its compiled (native) code allows for precise synchronization of
12 multiple events and it launches them at the web application with
13 millisecond accuracy.
- 14 • The eValid approach supports comprehensive event logging, script
15 editing, adaptive playback logic, full DOM access, real-time test
16 recording, and a range of result validation methods.

17 17. SRI filed the first patent application covering the test enabled web browser
18 invention on October 31, 2000. Ultimately, SRI received two patents, as described above, on
19 this technology. SRI's eValid product practices the claims of its patents.

20 18. SRI continues to make and sell its eValid testing of the web browser product
21 today. It competes, *inter alia*, with Microsoft.

22 **SRI's Disclosures To Microsoft**

23 19. On July 20, 2004, Microsoft employee Greg Deputy purchased a copy of
24 SRI's eValid V4 Server Loading Bundle, including functional test and server loading
25 features. The total purchase price, including maintenance support, was \$7,194.00. In
26 accessing the product, Mr. Deputy had to agree to the terms of SRI's End User License
27 Agreement ("EULA"). The EULA specifically cited that SRI had a patent pending on the
28

1 eValid technology. Mr. Deputy accepted the terms of this license, and so was on notice of
2 the pending patent, as was his employer, Microsoft.

3 20. In 2005, Microsoft renewed the license for an additional year. In doing so, it
4 again accepted the terms of the EULA, which cited the pending patent.

5 21. In early 2010, before Microsoft had a test enabled web browsing testing
6 product in the marketplace, Microsoft had a series of substantive meetings and
7 teleconferences with SRI and its representatives. The purpose of the meetings, as put by
8 Microsoft then, was to explore a "business integration" and various potential partnerships.
9 Microsoft also informed SRI that Microsoft was interested in "licensing the eValid test tool."

10 22. As part of these discussions, on February 26, 2010, Microsoft executed a Non-
11 Disclosure Agreement ("NDA") with SRI. SRI executed the same NDA on March 2, 2010.

12 23. Following the execution of the NDA, Microsoft and SRI had detailed
13 technical discussions concerning SRI's eValid product.

14 24. The first post-NDA meeting came on Thursday, March 4, 2010. After that
15 meeting, a Microsoft engineer wrote eValid to ask eValid for a "demo" that Microsoft could
16 "share internally to brainstorm on other integrations around this tool?"

17 25. Pursuant to Microsoft's request, SRI provided an eValid evaluation copy to
18 Microsoft on March 8, 2010. Following receipt of this evaluation copy, numerous Microsoft
19 representatives and engineers ran various testing scenarios using the eValid test tool. As part
20 of this process, Microsoft employees had to review and accept the terms of the then-current
21 SRI EULA, which included a specific citation to the issued '606 patent.

22 26. These meetings continued through the fall of 2010. In September 2010, a
23 senior Microsoft official with the test group abruptly discontinued all discussions with SRI.

24 ///

1 **Microsoft's Parallel Patent Application**

2 27. On October 22, 2004, after Microsoft had purchased and reviewed the SRI
3 eValid product, Microsoft inventors Bogdan Popp et al. filed a patent application, entitled
4 "Automated System For Testing Web Application," Case 10/972,162, and Application
5 2006/0101404.

6 28. This application covered a test enabled web browser, an invention
7 fundamentally similar to the eValid product that Microsoft had just purchased and reviewed.
8

9 29. In the USPTO Final Rejection Notice, dated March 8, 2009, the existing
10 eValid patent was cited extensively as disabling prior art.

11 30. Microsoft let the Popp application go abandoned on February 24, 2010.

12 **Microsoft's Infringing Goods And Services**

13 31. On April 12, 2010, after it had substantive meetings with SRI, Microsoft
14 released its 2010 version of Visual Studio, "VS2010."

15 32. In contrast to the earlier versions, the April 12 release of VS2010 included a
16 test enabled web browsing functionality. This product functions as does the eValid product,
17 and infringes the claims of SRI's patents.
18

19 **COUNT I**
20 **(Patent Infringement; Patent '606)**

21 33. Plaintiff incorporates by reference the allegations of paragraphs 1 through 32
22 above.

23 34. Plaintiff is the owner of the '606 Patent.

24 35. Microsoft has infringed and is still infringing the '606 Patent by, without
25 authority, consent, right or license, and in direct infringement of the '606 Patent, making,
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1 using, offering for sale and/or selling products using the methods and apparatus claimed in
2 the patent in this country. This conduct constitutes infringement under 35 U.S.C. § 271(a).

3 36. In addition, Microsoft has infringed and is still infringing the '606 Patent in
4 this country, through, *inter alia*, its active inducement of others to make, use, and/or sell the
5 systems, products and methods claimed in one or more claims of the '606 Patent. This
6 conduct constitutes infringement under 35 U.S.C. § 271(b).

7 37. In addition, Microsoft has infringed and is still infringing the '606 Patent in
8 this country through, *inter alia*, providing and selling goods and services designed for use in
9 practicing one or more claims of the '606 Patent, where the goods and services constitute a
10 material part of the invention and are not staple articles of commerce, and which have no use
11 other than infringing one or more claims of the '606 Patent. Microsoft has committed these
12 acts with knowledge that the goods and services it provides are specially made for use in a
13 manner that directly infringes the '606 Patent. This conduct constitutes infringement under
14 35 U.S.C. § 271(c).
15

16 38. Microsoft's infringing conduct is unlawful and willful. Microsoft's willful
17 conduct makes this an exceptional case as provided in 35 U.S.C. § 285.
18

19 39. As a result of Microsoft's infringement, Plaintiff has been damaged, and will
20 continue to be damaged, until Microsoft is enjoined from further acts of infringement.

21 40. Microsoft will continue to infringe the '606 Patent unless enjoined by this
22 Court. Plaintiff faces real, substantial and irreparable damage and injury of a continuing
23 nature from Microsoft's infringement for which Plaintiff has no adequate remedy at law.
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COUNT II
(Patent Infringement; Patent '175)

41. Plaintiff incorporates by reference the allegations of paragraphs 1 through 32 above.

42. Plaintiff is the owner of the '175 Patent.

43. Microsoft has infringed and is still infringing the '175 Patent by, without authority, consent, right or license, and in direct infringement of the '175 Patent, making, using, offering for sale and/or selling products using the methods and apparatus claimed in the patent in this country. This conduct constitutes infringement under 35 U.S.C. § 271(a).

44. In addition, Microsoft has infringed and is still infringing the '175 Patent in this country, through, *inter alia*, its active inducement of others to make, use, and/or sell the systems, products and methods claimed in one or more claims of the '175 Patent. This conduct constitutes infringement under 35 U.S.C. § 271(b).

45. In addition, Microsoft has infringed and is still infringing the '175 Patent in this country through, *inter alia*, providing and selling goods and services designed for use in practicing one or more claims of the '175 Patent, where the goods and services constitute a material part of the invention and are not staple articles of commerce, and which have no use other than infringing one or more claims of the '175 Patent. Microsoft has committed these acts with knowledge that the goods and services it provides are specially made for use in a manner that directly infringes the '175 Patent. This conduct constitutes infringement under 35 U.S.C. § 271(c).

46. Microsoft's infringing conduct is unlawful and willful. Microsoft's willful conduct makes this an exceptional case as provided in 35 U.S.C. § 285.

1 47. As a result of Microsoft's infringement, Plaintiff has been damaged, and will
2 continue to be damaged, until Microsoft is enjoined from further acts of infringement.

3 48. Microsoft will continue to infringe the '175 Patent unless enjoined by this
4 Court. Plaintiff faces real, substantial and irreparable damage and injury of a continuing
5 nature from Microsoft's infringement for which Plaintiff has no adequate remedy at law.

6 WHEREFORE, Plaintiff prays:

7 (a) That this Court find Microsoft has committed acts of patent infringement
8 under the Patent Act, 35 U.S.C. § 271;
9

10 (b) That this Court enter judgment that:

11 (i) The Miller Patents are valid and enforceable and;

12 (ii) Microsoft has willfully infringed the Miller Patents;

13 (c) That this Court issue a preliminary and final injunction enjoining
14 Microsoft, its officers, agents, servants, employees and attorneys, and any other person in
15 active concert or participation with them, from continuing the acts herein complained of,
16 and more particularly, that Microsoft and such other persons be permanently enjoined
17 and restrained from further infringing the Miller Patents;
18

19 (d) That this Court require Microsoft to file with this Court, within thirty (30)
20 days after entry of final judgment, a written statement under oath setting forth in detail
21 the manner in which Microsoft has complied with the injunction;
22

23 (e) That this Court award Plaintiff the damages to which it is entitled due to
24 Microsoft's patent infringement, with both pre-judgment and post-judgment interest;

25 (f) That Microsoft's infringement of the Miller Patents be adjudged willful
26 and that the damages to Plaintiff be increased by three times the amount found or
27 assessed pursuant to 35 U.S.C. § 284;
28

1 (g) That this be adjudged an exceptional case and that Plaintiff be awarded its
2 attorney's fees in this action pursuant to 35 U.S.C. § 285;

3 (h) That this Court award Plaintiff its costs and disbursements in this civil
4 action, including reasonable attorney's fees; and

5 (i) That this Court grant Plaintiff such other and further relief, in law or in
6 equity, both general and special, to which it may be entitled.

7 Dated: April 7, 2011

8 Respectfully submitted,

9
10
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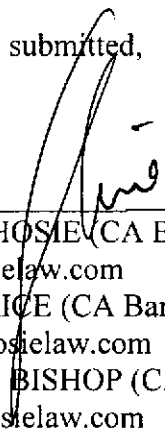
25 *Attorneys for Plaintiff*
26 *Software Research, Inc.*
27
28

DEMAND FOR JURY TRIAL

Plaintiff, by its undersigned attorneys, demands a trial by jury on all issues so triable.

Dated: April 7, 2011

Respectfully submitted,



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